

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

WILSON VALLEJO,

Petitioner,

Case No. 05-CV-70768-DT

v.

H.J. MARBERRY,

Respondent.

**ORDER GRANTING PETITIONER'S APPLICATION TO PROCEED
WITH AN APPEAL WITHOUT PREPAYMENT OF FEES AND COSTS
AND VACATING ORDER DENYING CERTIFICATE OF APPEALABILITY**

Petitioner Wilson Vallejo, who is currently incarcerated at the Federal Correctional Institution in Milan, Michigan, filed a *pro se* petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2241. On April 5, 2005, the court issued an Order of Summary Dismissal. Petitioner filed a Notice of Appeal. On May 10, 2005, the court issued an Order Denying Certificate of Appealability. Before the court is Petitioner's Application for Leave to Proceed With an Appeal Without Prepayment of Fees and Costs. Petitioner has also requested that the Order Denying Certificate of Appealability be vacated as inapplicable to a federal prisoner proceeding under 28 U.S.C. § 2241.

Federal Rule of Appellate Procedure 24(a)(1) provides that a party to a district-court action who desires to appeal *in forma pauperis* must file a motion in the district court. An appeal may not be taken *in forma pauperis* if the court determines that it is not taken in good faith. 28 U.S.C. § 1915(a)(3). "[T]o determine that an appeal is in good faith, a court need only find that a reasonable person could suppose that the appeal has some merit."

Walker v. O'Brien, 216 F.3d 626, 631 (7th Cir. 2000). The court finds in this case that an appeal may be taken in good faith.

Because Petitioner is a federal prisoner proceeding under 28 U.S.C. § 2241, he is not required to obtain a certificate of appealability to proceed on appeal. See 28 U.S.C. § 2253 (C)(1); Fed. R. App. P. 22(b)(1); see also *Wesson v. U.S. Penitentiary Beaumont, TX*, 305 F.3d 343, 346 (5th Cir. 2002) (“Because [petitioner] is proceeding under § 2241, he is not required to obtain a certificate of appealability to proceed on appeal.”). Accordingly,

IT IS ORDERED that Petitioner’s Motion for Leave to Proceed With an Appeal Without Prepayment of Fees and Costs [Dkt. # 8] is GRANTED.

IT IS FURTHER ORDERED that the May 10, 2005 Order Denying Certificate of Appealability [Dkt. # 7] is hereby VACATED.

S/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: June 6, 2005

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, June 6, 2005, by electronic and/or ordinary mail.

S/Lisa G. Teets
Case Manager and Deputy Clerk
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